

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES R. HAUSMAN

Plaintiff,

v.

HOLLAND AMERICA LINE - U.S.A., a
Washington corporation; HOLLAND
AMERICA LINE, INC., a Washington
corporation; HOLLAND AMERICA LINE
N.V., a Curacao corporation; and HAL
ANTILLEN N.V., a Curacao corporation,

Defendants.

Case No. 2:13-cv-00937-BJR

**DEFENDANTS' SUBMISSION RE
EVIDENCE OF "OTHER INCIDENTS"**

Defendants take issue with Plaintiff's intention to discuss, and admit at trial, evidence allegedly derived from "other incidents," suggesting that the incidents put Defendants on notice of a systemic and chronic problem which, if resolved, would have avoided Plaintiff's injury; and to establish, it seems, the requisite "malicious and willful disregard for safety," to support a punitive award. Plaintiff seeks to admit evidence regarding other incidents having so relation to or similarity with Plaintiff's incident. Defendants seek the opportunity to fully discuss the merits of this dispute regarding "other events," because this evidence is key to the

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1 weight of the case for liability, and regarding punitive damages. The Court's limitation on
2 this briefing disallows adequate discussion of this important issue, especially given the extent
3 to which Plaintiff's are seeking to stretch the idea of "similarity."

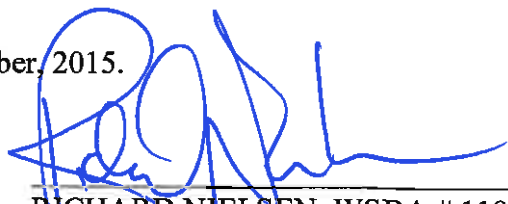
4 In fact, the majority of the incidents Plaintiff seeks to offer into evidence, are factually
5 inapposite to the Hausman incident; "other incidents," to be helpful rather than prejudicial,
6 must be events, the circumstances of which would put a reasonable person on notice of an
7 issue requiring attention and repair *as pertinent to Plaintiff's incident*. The circumstances and
8 causes of the "other incidents" at issue must have some relation to Plaintiff's contentions in
9 this case, regarding this door, and this vessel, and what happened in November 2011.
10 Although much greater detail is available and Defendants are prepared to argue the individual
11 instances to the Court in a pretrial proceeding, Defendants offer the summaries attached as
12 Exhibit A, to provide the flavor of the differences. Plaintiff's focus on the *Andermo* litigation
13 is instructive; Plaintiff wishes to offer a video and the facts/file regarding an incident
14 involving Mrs. Andermo; Mrs. Andermo pursued a claim with HAL and that claim was
15 resolved, on its merits. The "re-enactment" videotaped by Mr. Andermo does not rise to the
16 level of substantive evidence in this case. Nothing about the *Andermo* matter should be put
17 before the jury.

18 Other "instances" are even more dissimilar. They include events involving crew only
19 doors that swing and have only ankle-level electric eye beams to trigger the doors to swing
20 from the "outside"; nothing like the equipment and setup of the doorway at issue. Plaintiff
21 includes folks who have brushed a door with their arms and reported a scratch, and people
22 who simply have walked into closed doors. Other distinguishing details are available, and
23 important to consider, once offered to the Court.

It is known that HAL had received no notice of any prior incident involving the
subject doors on the *ms AMSTERDAM*; it is known that the subject doors met the European
regulatory standards, the location at which the vessel was built and the doors were
manufactured and installed by a third party. The few incidents gathered for review involve all

1 the HAL ships, except the AMSTERDAM, and all HAL door types and designs. Before
 2 allowing the jury to consider those other incidents, we must have a preliminary and sufficient
 3 showing by Plaintiff to establish sufficient similarity between occurrences to justify allowing
 4 the discussion of the other incidents as context *for Plaintiff's case*. Plaintiff's case must rise
 5 or fall on its merits, not on the basis of some imagined "avalanche" of allegedly "ignored"
 6 door incidents, as seems to be the basis for Plaintiff's efforts in this regard. Especially given
 7 the anticipated use by Plaintiff to impact not only his liability case, but also, his pursuit of
 8 punitive damages, the Court should conduct a meaningful assessment of the available
 9 information to allow Plaintiff to offer only events that were substantially similar to the
 Hausman incident.

10 DATED this 11^R day of September, 2015.



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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington.

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